

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

HAWTHORNE COMMUNITY
HOSPITAL, INC.
(Petitioner)

PRECEDENT
TAX DECISION
No. P-T-73
Case No. T-69-55

Employer Account No.

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

The Department has appealed from Referee's Decision No. LA-T-2949 which granted the petition for review automatically converted from a petition for reassessment under the provisions of Unemployment Insurance Code section 1179.5. Oral argument was presented on behalf of the parties in support of their respective positions.

STATEMENT OF FACTS

During the period under review, which extends from October 1, 1965 through December 31, 1967, the petitioner, a nonprofit corporation, owned certain hospital premises in Hawthorne, California. Upon these premises, it operated a community hospital under a license issued by the State Department of Public Health pursuant to the provisions of Health and Safety Code section 1406. At this hospital it rendered the customary hospital services to patients in the usual manner.

In so doing, it furnished the equipment, instruments, drugs and medical and surgical supplies required for the patients' treatment. It provided all of the nursing, technical, clerical and other paramedical personnel whose services were necessary in connection with patient care. Through its employed department heads and supervisors, the petitioner exercised control over the manner and methods by which these employees accomplished their assigned tasks within the framework of physicians' orders.

The petitioner regarded all such personnel who performed their duties at its hospital as its employees. As an employer under the provisions of Unemployment Insurance Code section 679, it reported and paid contributions on their wages. It does not dispute their status as employees in these proceedings.

In carrying on the operation of its hospital, it has never been the petitioner's intention or purpose to become engaged in the practice of medicine. The patients treated in its hospital were under the care of legally licensed physicians and surgeons whom the petitioner regarded as independent contractors. The petitioner neither reserved nor exercised a general right of control over the manner and methods used by those physicians and surgeons in rendering their professional services to the patients under their care.

The petitioner's board of directors was composed of individuals who were not legally qualified to practice medicine in this state, and who were not qualified from a practical point of view to exercise a right of control over medical practice. The petitioner has never employed a medical director or other individual qualified to practice medicine to exercise any such control. In accordance with the requirements of (now repealed) section 288 of Title 17 of the California Administrative Code, it placed all control over professional work performed in its hospital in the hands of a self-governing organization known as the "Attending Staff of Hawthorne Community Hospital."

This attending staff consisted of the physicians and surgeons licensed to practice medicine in this state who were permitted to practice in the petitioner's hospital. Appointments to membership on the staff were made by the petitioner's board of directors at the request of the executive committee of the staff. The executive committee in turn acted upon the recommendation of the staff's credentials and membership committee.

The attending staff adopted various published rules and regulations pertaining to the admission and care of patients in the petitioner's hospital, and also in regard to maintenance of patient records and files.

It also had special committees of its membership who were charged with the responsibility of reviewing the professional work done in the hospital, and of analyzing the various professional records, technique and procedures done in the hospital with their indications. All such reviews of the professional conduct and practice of physicians and surgeons by the attending staff were retrospective in nature.

Under the provisions of Business and Professions Code section 2008, the petitioner had no professional rights, privileges or powers in connection with the practice of medicine. Under the provisions of Business and Professions Code section 2392.5, it would have constituted unprofessional conduct for a physician or surgeon licensed under the Medical Practice Act of this state to treat or prescribe regularly for patients in a licensed hospital of the petitioner's classification unless it had an organized medical staff that was self-governing with respect to professional work that was performed in such hospital. Such a staff also had to be authorized and required to review and analyze its members' clinical experience at regular intervals using the medical records of the patients as a basis for such review and analysis.

The petitioner had the right to control the use of its premises and the use of its employed nursing, technical and paramedical personnel by physicians and surgeons. The petitioner bore a legal responsibility for the conduct of its personnel in carrying out the orders given them by attending physicians and surgeons. It had an important special interest in taking proper care to assure that the doctors permitted to practice on its premises and to direct its personnel were competent in the practice of their professions.

During the period under review, the petitioner maintained and operated a 24-hour emergency room on its hospital premises to provide emergency services to the public. Patients treated in this room received both medical and hospital services to the extent that the needs of the emergency required. The hospital services were provided by the petitioner through its employed personnel in the same manner as in other departments of the hospital.

Under the provisions of Title 17, California Administrative Code, section 286, the petitioner's hospital was required to have arrangements with licensed physicians who could be called in an emergency to render medical services. A patient brought into the petitioner's emergency room could obtain the emergency medical services that he needed from a physician designated as the emergency room physician, or from another physician whom the emergency room physician had selected and appointed to be present in his absence; or the patient could request that the medical services he needed be provided by any member of the hospital's medical staff privileged to attend emergency room patients. It is the employee or independent contractor status of the doctors rendering medical services to patients in the emergency room at the petitioner's hospital that is the subject of controversy in these proceedings.

The physician designated as the emergency room physician was under direct contract with the petitioner. During the period under review, two physicians successively occupied this office. The other physicians involved in the assessment were either members of the petitioner's medical staff or nonmembers selected and appointed by the emergency room physician to render emergency services in his absence.

The first of the two emergency room physicians involved in the assessment was Dr. P. C. Lawyer who held that position from about 1963 until he died in June of 1966. His written contract with the petitioner obligated him to provide medical service coverage of the emergency room 24 hours a day, seven days a week. This coverage was to consist either of his personal presence or immediate availability, or that of other licensed physicians substituted by him with the approval of the petitioner.

Under this contract, Dr. Lawyer agreed that to the extent reasonably possible, he would collect fees for the services rendered to emergency patients. The hospital acting solely as an agent for him agreed to bill and attempt to collect those fees, and to render a monthly accounting to him of the billings and collections made. In the event that such collections were less than \$1,300 in any one month plus a mutually

agreeable amount representing the cost to Dr. Lawyer of providing night, weekend and holiday coverage, the hospital agreed to make up the difference as a guaranteed minimum. Dr. Lawyer, however, agreed to refund to the hospital any such difference paid to him to the extent that in any subsequent months these professional fees exceeded the guaranteed minimum.

The written agreement provided that the petitioner should neither have nor exercise any control or direction over the methods by which the physicians performed their functions in the emergency room, and that the petitioner's sole interest was to insure the result that the emergency service be performed and rendered in a competent, efficient and satisfactory manner in accordance with the standards required by the California Medical Association. Any disputes between the parties were to be arbitrated by the Executive Committee of the petitioner's medical staff. Either party could terminate the agreement on ten days' written notice to the other.

The arrangement contemplated by the agreement was purely for emergency service. Dr. Lawyer's agreement provided that the physician in the emergency room would determine as soon as possible in each case whether the emergency patient had a family physician upon the hospital staff, and if so that he would notify that physician and transfer the patient to his care as soon as that physician could assume responsibility. It was also agreed that any arrangement by the physician in the emergency room for rendering medical services to bed patients of the hospital was outside the scope of the written agreement for emergency care.

The second individual who occupied the position of emergency room physician was Dr. Michael B. Amir. He has served as such ever since Dr. Lawyer's death in June of 1966. He and the petitioner orally agreed that he would become the emergency room physician under the same arrangement as Dr. Lawyer had, but they never reduced this agreement to writing. Periodically, however, the hospital's minimum guarantee has been increased to the ultimate level of \$2,667 per month.

Dr. Amir is independently engaged in the practice of medicine and surgery in Canoga Park. He specializes in the practice of traumatic medicine and surgery in

the emergency room at the petitioner's hospital. He is a regular member of the petitioner's medical staff and by virtue of such, he is entitled to admit and treat patients at the petitioner's hospital.

The evidence does not reflect whether or not Dr. Lawyer maintained a private office for the practice of medicine away from the petitioner's premises. However, under the terms of his written agreement with the petitioner, his right to engage in independent private practice consistent with the obligations of his contract is expressly recognized.

The record does not indicate the identity or number of the other doctors included in the assessment. Generally speaking, the amounts assessed for each quarter are substantially larger than the amount of the petitioner's minimum guarantee to the emergency room physician. From this it would appear that either very substantial amounts of medical services were rendered by the doctors other than the emergency room physicians, or that the fees collected for the professional services of Dr. Lawyer and Dr. Amir through the hospital as a billing agent for them were much in excess of the guarantee.

Except as noted above, the rendition of medical services in the petitioner's emergency room was conducted on the same basis as the similar rendition of services in any other department of the petitioner's hospital. The petitioner neither reserved nor exercised a general right of control over the manner or methods used by the physicians rendering medical services in the emergency room. The attending staff had the same responsibility of retrospectively analyzing and reviewing the professional work done in that room as it had of so doing in regard to such work done in any other part of the hospital.

During the last two months of the 27-month period under review, the petitioner was under written contract with the County of Los Angeles to furnish inpatient hospital service and necessary medical care when available to any person referred under the County's Emergency Aid Plan or brought to its hospital by an ambulance duly authorized by the County. The agreement provided that medical care would be furnished by physicians duly

licensed to practice medicine in California, and that it was understood that such treatment furnished was not to be construed as the hospital entering into the practice of medicine.

Under the agreement, the County agreed to reimburse the petitioner for services rendered to indigent persons requiring emergency medical care who were not eligible for such services under the Federal Social Security Medical Care Program or the California Medical Assistance Program, at prices not exceeding those billed by the petitioner to the fiscal intermediary under the California Medical Assistance Program for like services. The agreement provides that necessary physician and surgeon services would be made available by the petitioner, and that no fee for such services should be charged to or paid by the County. There is no evidence of any arrangement by the petitioner to pay any physician or surgeon for medical services rendered to an indigent patient at the petitioner's hospital under this contract.

REASONS FOR DECISION

In our Appeals Board Decision No. P-T-2, we discussed at length the principles which govern the determination of the status of an individual as an employee or an independent contractor for unemployment insurance purposes. Essentially, these are the same as the principles of the common law as they have been collected together and conveniently stated in section 220(2) of the American Law Institute's Restatement of the Law of Agency. The determination of an individual's status in accordance with these principles involves an evaluation of a group of factors pertaining to the rendition of his services.

What we said in Appeals Board Decision No. P-T-2, especially between pages 8 and 15 of that decision, need not be repeated here, but may rather be incorporated by reference. That particular discussion is of general application to the analysis of all occupations except those for which the legislature has specifically prescribed another standard. It should not be interpreted as applying solely or even primarily to the particular occupation of the individual involved in that case.

Accordingly, the analysis of the status of the doctors involved in this matter begins in the same way as does the analysis of any other occupation, with the application of these principles to the overall picture of the whole working relationship. It is not the occupation alone that governs the status determination, but the whole of the working arrangement under which the services in the occupation are rendered. Doctors, like any other individuals, may render their services either as employees or as independent contractors.

Nevertheless, the nature of the occupation is one of the factors to be considered in the analysis, particularly as the customs of the locality reflect whether that particular type of work is usually done under the direction of an employer or by a specialist without supervision. In the medical profession, unusually strong patterns of customs and professional ethics exist that are even embodied in laws and administrative regulations. (See Business and Professions Code sections 2308, and 2360 through 2399.5; also see Title 16, California Administrative Code, page 117) All of these very forcefully influence the working relationships which doctors establish. In the case of doctors almost more than in the case of any other occupation, the nature of the occupation factor exerts a most important influence on the proper interpretation and analysis of their working relationships.

This is probably even more true in those most fundamental relationships which doctors have with certain institutions such as hospitals. Those institutions exist for the purpose of healing the sick, yet what they do in the proper and legitimate exercise of their functions is never considered to constitute the practice of medicine. The failure to take into proper account this long existing and well established background could actually cause well understood and legitimate arrangements in connection with the healing of the sick to be viewed in a light that would make them tantamount to violations of the Medical Practice Act and other laws of this state.

Naturally, we cannot absolve employers and employees from liability for contributions that accrue against them upon the basis of employment relationships that they actually establish, just because the working

relationship involved might be unlawful as such under some other law. However, when we are called upon to interpret the structure of a working relationship, we should, in connection therewith, always presume that the parties intended to obey all of the laws governing it, unless the facts will not admit of any such presumption. Certainly, in the matter before us, there is no reason to presume that the parties intended to establish a relationship that was unlawful.

In status determination, the most important factor - the one that is usually referred to as the principal test - is that of the principal's right to control the workman's manner, mode, methods, and means of performing the details of his work. The extent to which this right exists is of fundamental importance to the test. In this connection it is well to point out as we did in Appeals Board Decision No. P-T-2 at pages 10 and 11 of that decision that complete abnegation of control is not essential to the status of an independent contractor.

Rather an employment relationship is indicated by that degree of control that our courts have characterized as "complete" and "authoritative." This is a right of general control not only as to what shall be done, but when and how it shall be done as well. It is to be contrasted with the types of limited control over performance of the work which a beneficially interested principal may retain for definite and restricted purposes without becoming an employer.

The evidence very clearly reflects the belief of the parties that it was not their intent to create an employment relationship. It also clearly reflects the position of the hospital as a principal beneficially interested in the performance of the work. It was obligated both by law and contract to provide facilities for emergency services to patients and to arrange for competent medical care to be available at those facilities. The most important factor of control then in this situation really focuses upon the question as to whether the extent of control reserved by the hospital over the doctors was of limited extent or so general as to be considered "complete" and "authoritative."

We may be able to gain some insight into this question if for a moment we turn our attention away from the doctors who practiced in the emergency room, to the doctors whose practice in the hospital involved the treatment of patients for whose admission they had arranged in usual course. There does not appear to be any question that these doctors were independent contractors in their relationships with the hospital. Their status as such was not altered by the fact that the hospital furnished and controlled the premises where their patients were treated, supplied the necessary equipment, instruments, drugs and medical and surgical supplies required for their patients' treatment, and provided all of the paramedical personnel whose services were necessary in connection with patient care.

Nor was it altered by the fact that in order to practice medicine in the petitioner's hospital, these doctors had to be members of an organization known as the attending staff, and that to a certain extent by virtue of such membership, the professional work which they performed in the hospital was subject to a retrospective review by special committees of this staff. Nor was it altered by the fact that these doctors were pledged to abide by various hospital rules and regulations pertaining to the admission and care of patients and in regard to the maintenance of patient records and files.

The important thing in connection with the determination of the status of these doctors is that they were free to prescribe for, treat and diagnose their patients in accordance with their own independent professional judgment. That is the essence of the performance of medical services. When a doctor reserves that fundamental degree of control over his own activity to himself, he cannot be said to have submitted to the "complete" and "authoritative" control of another over his professional work.

A doctor may lawfully yield that degree of control to another doctor whom he may serve as an employee. He cannot lawfully yield it to an institution such as a hospital, nor could a hospital lawfully exercise that degree of control over him under the laws of this state. Clearly the petitioner did not require any doctor practicing medicine in its hospital to yield to it an unlawful degree of control over his professional conduct.

If we return now to the doctors involved in these proceedings, we find two things in general that distinguish their relationship with the hospital from the others who practice there. These particular doctors were directly or indirectly under a commitment to the hospital to prescribe for, treat and diagnose patients who, generally speaking, were not previously their patients before attending them in the hospital, and they were under a commitment to be available to render necessary medical services to such patients in emergency situations. In exchange for the former, the hospital acted as a collection agent for their professional fees, and in exchange for the latter, it made the emergency room physician a guarantee of a minimum payment in the event that the fees realized failed to exceed a stipulated amount.

Aside from these features, the relationship of these doctors with the hospital was the same as the others. They were subject to the same limited controls by members of the attending staff as any other doctor and no more. They were just as free to prescribe for, treat and diagnose the patients under their care in the emergency room as were the other doctors treating patients elsewhere in the hospital, and just as free to engage in the private practice of medicine generally.

The peripheral arrangements peculiar to the relationship of these doctors with the hospital were clearly limited controls retained by a beneficially interested principal. They do not either alone or in conjunction with those retained over all doctors generally, who practiced in the hospital, add up to the kind of control over the performance of doctors' services that can be considered to be "complete" and "authoritative." In no way did they reach into what is the essence of the performance of medical services, the prescribing for, treating, and diagnosing of the patient.

We hold, therefore, that the doctors involved in this assessment were independent contractors.

A word of comment may be in order about our Tax Decision No. 1864, particularly as it relies upon the Tennessee case of National Optical Stores Co. v. Bryant (1944), 181 Tenn. 266, 181 S.W. 2d 139. The Tennessee

Unemployment Compensation Law under which that case was decided contains a statutory standard of status determination which differs from the California law. Moreover, the situation involved in that case is quite similar to the situation involved in Pilger v. City of Paris Dry Goods Company (1927), 86 Cal. App. 277, 261 Pac. 328, which latter case was apparently not considered in Tax Decision No. 1864. The City of Paris case is a California appellate court decision which we must follow to the extent of any conflict between these two court cases.

DECISION

The decision of the referee is affirmed. The petition is granted.

Sacramento, California, May 5, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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